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SUBJECT: VIETNAM: 2005 INVESTMENT CLIMATE STATEMENT

REF: Hanoi 00468

¶1. This cable provides the 2005 Investment Climate Statement for Vietnam.

¶2. Begin text of the 2005 Investment Climate Statement for Vietnam:

Vietnam - Investment Climate Statement

A1 Openness to Foreign Investment:

Vietnam, in principle, maintains a policy of encouragement of foreign investment. A crucial element in its long-term development strategy is the continued ability to attract and utilize relatively large amounts of overseas capital, both foreign direct investment (FDI) and official development assistance (ODA). (Vietnam does not yet allow any significant foreign portfolio investment.) For the 2001-2005 period, the Government of Vietnam (GVN) has established targets for FDI at US$ 11 billion in disbursements from existing and newly licensed foreign investments and for approximately US$ 10-11 billion in ODA disbursed by foreign donors for a total of US$ 21-22 billion from foreign sources. These levels of FDI and ODA estimates are required to support the government's GDP growth target of 7.5 percent per year.

By December 2004, Vietnam had attracted nearly US$ 46 billion in investment commitments since the country was opened to foreign investment in 1988. Approximately US$ 27 billion, or 58 percent, of that amount has been disbursed in 5,109 projects. Sixty-six percent of disbursed investment was made into projects concentrated in or near the two major cities of Ho Chi Minh City in the south and Hanoi in the north. U.S. businesses have received 215 investment licenses for projects worth nearly US$ 1.3 million and have injected US$ 730 million thus far into Vietnam. Significant additional U.S. investment is counted as investment from third countries in cases where, for example, the investment involves a third-country subsidiary of a U.S. company. The United States Agency for International Development (USAID) and the Ministry of Planning and Investment have been conducting research in this area. Their latest estimate of total U.S. investment including all U.S.-related investment is 251 projects with a total registered capital of USD 2.5 billion (as of July 2004).

As the GVN continues to proceed with its long-standing policy of reform of the economy, openness to foreign business, and integration into the world economy, Vietnam's rapidly growing population of 81 million should become an increasingly attractive investment destination. Vietnam entered into the Asia-Pacific Economic Cooperation forum (APEC) in late 1998. It is committed to enter into and fully comply with its obligations under the ASEAN Free Trade Area (AFTA) by 2006. In addition, it is currently engaged in negotiations to join the World Trade Organization (WTO). Perhaps the strongest recent signals of the country's commitment to economic reform and improving business climate were entry-into-force of the U.S.-Vietnam Bilateral Trade Agreement (BTA) in December 2001 and completion of agreements on economic reform with the International Monetary Fund (IMF) and World Bank also in 2001. Although the GVN and IMF allowed their agreement to expire in April of 2004 because the GVN was unable to meet IMF policy on audit and accounting arrangements, the IMF remains fully committed to continuing an effective partnership with the GVN to support the implementation of the Comprehensive Poverty Reduction and Growth Strategy and offer guidance on maintaining macroeconomic stability. Moreover, the IMF gave

Vietnam good marks for its macroeconomic stability.

In light of Vietnam's strong macroeconomic performance despite the global economic downturn and continued progress on economic reform, Standard and Poor's assigned Vietnam's foreign and local currency bonds a BB minus long term and a B minus short term rating and labeled the long term outlook stable. Moody's was expected to upgrade Vietnam's long term rating from currently B1 to BA3. These developments, taken together with the country's relatively low-wage work force and natural resource base, are convincing foreign investors to consider Vietnam when looking for their next investment location.

However, despite an official policy encouraging foreign investment and a solid economic performance, Vietnam remains a difficult investment environment and potential investors should carefully scrutinize any investment plans. Currently in a period of transition from a command economy to a 'state-supervised' market economy in which the state sector retains a 'leading role,' Vietnam is implementing a series of gradual reforms that will enable the economy to function more efficiently. As the GVN engages in this complex process, foreign investors must cope with a wide range of problems and costs. These include poorly developed infrastructure, underdeveloped and cumbersome legal and financial systems, an unwieldy bureaucracy, non-transparent regulations, high start-up costs, arcane land acquisition and transfer regulations and procedures, and shortage of trained personnel. Issuance of investment licenses can be a lengthy process. Moreover, investment projects in both pre- and post-establishment phases must cope with frequent changes in the investment environment in areas such as taxes, tariffs, import and export policies, and procedures. Additionally, the Vietnamese courts have so far proved unwilling or unable to enforce laws related to investor protections, in particular, the enforcement of arbitral awards. Finally, investors cite official corruption as a significant problem in establishing and running their business. In particular, investments involving joint ventures with State-owned enterprises have proven especially vulnerable to corruption and abuse.

Foreign investment in Vietnam is regulated by the Ministry of Planning and Investment (MPI) through the Law on Foreign Investment (LFI) and related implementing regulations, decrees, and circulars. This law was first introduced in 1989 when the country was opened up to investment and was followed by a series of amendments and supplements in order to improve the climate for foreign investors. The latest guiding regulation is Governmental Decree Number 27 issued in March 2003. It provides amendments to the 2000 Decree Number 24, which promulgated detailed regulations on the implementation of the LFI. Decree 24 includes an explicit pledge against expropriation, guarantees the right to repatriate profits, and states the GVN's intent to treat private and State sectors equally. The law provides significant fiscal and tax incentives to attract foreign capital.

Vietnam is also working to establish the legal framework to support a healthier, more transparent business environment and to level the playing field between domestic and foreign investors. In 2004, the National Assembly passed a revised bankruptcy law and a Law on Competition. MPI also began drafting a Common Investment Law and revisions to the Enterprise Law, and anticipates submitting these to the National Assembly by the end of 2005 to become effective in ¶2006.

There are four primary forms of investment for foreigners in Vietnam:

a) Joint venture (JV) agreements pair foreign and local companies sharing capital and profits. The contribution of the local company, typically a State-owned enterprise (SOE), to the JV frequently consists solely of land use rights. The minimum percentage of foreign involvement in a JV is 30 percent, but examples of JVs where the foreign partner is not a majority shareholder are rare. The minority partner retains veto power over the majority partner concerning selection of senior management and changes in the JV charter. However, for U.S. investors, these rights will be phased out within three years of entry into force of the BTA. Joint ventures account for the majority of foreign investment to date. Many investors find JVs attractive because they can

benefit from the assistance of an established Vietnamese firm in dealing with bureaucratic and administrative procedures. They also provide foreign investors access to land that may otherwise be difficult to secure. Some investors complain the government allows local partners to overvalue their land use rights.

b) Business Cooperation Contracts (BCC) permit a foreign firm to pursue business interests in cooperation with a Vietnamese firm by investing capital and sharing revenues without conferring the right of establishment or ownership. In many respects, it is the most flexible arrangement Vietnam offers to foreign investors. However, a BCC license typically does not contain tax holidays or concessions given to other types of foreign investments. BCC's have predominated in the telecommunications sector and, as production sharing contracts, in the petroleum sector, where the government limits foreign involvement in operations and management.

c) 100-percent Foreign-Owned Enterprises have become more popular recently, as investors have learned to navigate the local system on their own. The GVN has shown increasing willingness to permit them on a case-by-case basis, particularly in industrial production for export.

d) Build-operate-transfer (BOT) agreements are the least commonly used form of foreign investment. While authorized under the LFI and specific BOT legislation, the legal, regulatory, and financial framework for BOT's remains incomplete. The LFI also recognizes build-operate-own (BOO), build-transfer-operate (BTO), and build-transfer (BT) forms of investment. Under a BOT agreement, the investor builds an infrastructure project, operates it for an agreed period of time to recover the investment and earn a profit, and then cedes it to the government without further compensation. Several foreign-invested BOT licenses have been granted, but many others have been held up in protracted negotiations. The most intractable BOT issues have been financing, product pricing and government regulatory and cost-recovery guarantees.

Foreign investors have pressured the Vietnamese government for years to expand the permissible forms of foreign investment. As part of an effort to unify the laws governing foreign and domestic enterprises, the Government issued Decree 38 in April 2003 providing for the conversion of a number of foreign invested enterprises (FIEs) into foreign invested shareholding companies (FISCs). The conversion option is only available to JVs and FIEs. A FISC must continue to implement the approved investment project of the former FIE and will be entitled to preferential treatment under the Law on Foreign Investment and its implementing regulations. Nevertheless, the rights of FISCs' shareholders and the organizational structure of the FISCs will be governed by the Law on Enterprises, the same as for domestic shareholding companies. A FISC must have at least one foreign founding shareholder and the total shareholding of the foreign founding shareholder(s) must be at least 30% of the FISC's chartered capital throughout the life of the company. FISC will be permitted to list on the Vietnam stock exchange.

To qualify for conversion, a FIE must be in operation for at least 3 years, must have made profits in the year immediately preceding the year of conversion, and its legal capital must be fully paid up. All conversions are subject to the Prime Minister's approval. Only a limited number of FIEs have been selected by the MPI, in consultation with other ministries, for conversion into FISCs. The Prime Minister approved six FIEs to take part in the first round of conversion. This number is much lower than the MPI's target of 20-25 participants. After the first pilot FISCs have been tested, Decree 38 will be reviewed by the Government and may be extended to a wider range of FIEs.
Other reforms under the Government Decree Number 27 issued in March 2003 include:

?A new 100 percent Foreign Owned Enterprise (FOE) may now be formed between an existing FOE and (i) another existing FOE and/or (ii) new foreign investor(s);
?A Business Cooperation Contract may now be established by an existing joint venture enterprise or an existing FOE with another foreign organization or individual;

?A new Joint Venture Enterprise (JVE) may now be established between an existing FOE and a Vietnamese enterprise or between an existing FOE
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and an existing JVE. However, a JVE may not be established between an existing FOE and a foreign investor or an overseas Vietnamese investor.

Decree 27 also abolishes the restriction that any legal capital (equity) in the form of technology transfer must not exceed 20 percent of legal capital, and is subject only to agreement by the parties of the company.

At present the Government maintains an extensive investment licensing process that is characterized by stringent and time-consuming requirements that are frequently used to protect domestic interests, limit competition and allocate foreign investment rights among various countries. The Ministry of Planning and Investment (MPI) is the primary point of contact for most foreign investors. But Vietnam currently does not offer at the central level a 'one-stop shop' for investment negotiation and approval. Foreign investors typically must contact and obtain support and/or approvals from a number of national and local agencies; indeed, licensing approval is required from other ministries or government bodies which regulate particular sectors, especially oil and gas, pharmaceuticals, financial services. In addition, investors may not always be aware of all regulatory requirements for licenses, which have led at times to complaints of unfair or discriminatory treatment. Licensing is required not only for establishment, but also in order to make significant changes to an operating concern such as to increase investment capital, restructure the company by changing the form of investment or investment ratios between foreign and domestic partners, or add additional business activities.

In the early 1990's, all foreign investment projects required approval by the Prime Minister. Overtime, in an effort to reduce obstacles to foreign investment, this list of projects subject to approval at the highest levels was reduced. At present, Prime Ministerial approval is required for investment licenses for the following:

?projects with investment capital in excess of US$ 40 million in electricity; mining, metallurgy, cement, mechanical engineering, manufacture, chemicals, hotels, apartments for lease, tourism, and entertainment;

?projects of any value in the following sectors:

?Infrastructure construction of industrial zones (IZ) and export processing zones (EPZ), urban areas, build-operate-transfer, build-transfer-operate and build-transfer projects;
?Construction and operation of seaports and airports; operation of sea and air transportation;
?Oil and gas;
?Post and telecommunications services;
?Culture; including publishing, press; radio and television broadcasting; medical examination and treatment establishments; education and training; scientific research and production of medicine for human diseases;
?Insurance, finance, auditing and inspection;
?Exploration and exploitation of rare and precious natural resources;
?Construction of residences for sale; and,
ale; and,
?National defense and security projects.

?projects that use five hectares or more of urban land or 50 hectares or more of rural land.

Vietnamese authorities evaluate investment license applications using a number of criteria including:

?the legal status and financial capabilities of the foreign and Vietnamese investors;
?the project's compatibility with Vietnam's 'Master Plan' for economic and social development;
?the benefits accruing to the government or to the Vietnamese party, especially acquisition of new production capabilities, industries, technologies, expansion of

markets; and job creation;
?projected revenue;
?technology and expertise;
?efficient use of resources;
?environmental protection;
?plans for land use and land clearance compensation;
?project incentives including tax rates and land, water, and sea surface rental fees.

Over time, the GVN has gradually but steadily improved its investment licensing regime. Greater
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authority over investment licensing has been devolved to provinces, municipalities, and investment zones. Provincial People's Committees now have authority to issue investment licenses for projects not subject to Prime Ministerial approval, which do not exceed US$ 5 million in invested capital, or US$ 10 million in invested capital in the areas of Hanoi and Ho Chi Minh City. MPI is working on a proposal to decentralize state management in foreign investment. Under this proposal Hanoi and Ho Chi Minh would be given authority to grant licenses for foreign investment projects with capital up to US$ 40 million. Other provinces and cities would be authorized to issue licenses for projects up to US$ 20 million invested capital, except projects subject to Prime Ministerial approval. MPI may also authorize Provincial Industrial and Export Processing Zone Management Boards to issue investment licenses for those projects that are not subject to approval by the Prime Minister and do not exceed US$ 40 million. Several provincial committees and IZ management boards have significantly streamlined licensing procedures in their jurisdictions, reducing the time to days if not hours in some cases. Ho Chi Minh City is in the process of implementing a "one-stop shop" for investment licenses its government is authorized to issue. While this decentralization is frequently in the foreign investor's favor, it has also given rise to considerable regional differences in procedure and interpretation of relevant investment law and regulation.

In addition, the 2000 amendment to the LFI added a "Registration" licensing procedure where previously only an "evaluation" or approval procedure had existed. Under Registration procedures: projects cannot be refused a license so long as all the necessary documents have been submitted; the applicants are not required to submit a detailed feasibility study; and the review time limit is only 15 days compared to the 45-day period mandated for the licensing via the Evaluation procedure. Registration procedures are only open to those projects that are not subject to prime ministerial approval and/or environmental impact assessment. Government Decree 27 issued in 2003 has amended the conditions for investment registration as follows:

Projects must satisfy one of the following alternative conditions:

a.exporting 80% of products (reduced from 100%); or
b.investing in an encouraged or specially encouraged project located in an industrial zone (as opposed to the previous requirement of investing in an industrial zone and satisfying export ratio criteria); or
c.belonging to the manufacturing sector with up to USD5 million invested capital

Because it recognizes the need for increased foreign direct investment if Vietnam is to reach the ambitious development goal set out in the 2001-2010 Socio-Economic Development strategy, the GVN has a policy of trying to improve the climate for
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investment. Perhaps the single most important event in Vietnam's recent economic history is the entry-into-force of the U.S.-Vietnam Bilateral Trade Agreement (BTA). Implementation of Vietnam BTA commitments will help ensure fair access and treatment for U.S. investment, goods and services. The BTA provides a broad range of benefits for U.S. investment in Vietnam that should significantly enhance the investment environment for U.S. firms. A major part of the BTA is devoted to investment which: provides national and most-favored-nation treatment, except where explicit exceptions have been made; guarantees access to third-party investor-state dispute settlement; disciplines trade-related investment measures; ensures treatment of expropriation consistent with international

standards. In addition, other chapters of the BTA will reduce tariffs and quantitative restrictions on U.S. investor's imports; permit U.S. investors to engage directly in trade; require the government to operate more transparently; open sectors of interest to U.S. business including banking, insurance, professional services, telecommunications, distribution, etc.; and provide protection consistent with World Trade Organization (WTO)-standards for U.S. investors' intellectual property.

Also, a number of important policy decisions and legal changes have been made which are intended to create a more open, business friendly investment climate for both foreign and domestic private investors. On December 25, 2001, the National Assembly adopted changes to the Constitution of 1992, which contained several business related items in Articles 15 and 16. One provided the constitutional basis for Vietnam's integration into the international economy. Another formally recognized the foreign direct investment and the domestic private sectors as components within the Vietnamese economy in addition to the already recognized sector comprising SOEs. Previously, the approach under Vietnamese law was to permit a firm to engage only in those activities for which it had explicit permission. The amendment package formally stated the principle that businesses could engage in all activities except those prohibited by law. These constitutional changes codified at the Constitutional level changes in approach with respect to foreign and domestic private sector investment contained in the economic reforms of the 1990's, lending them a level of permanence that they had heretofore not enjoyed.

In addition, in 2001-2002, both the Government and the Communist Party of Vietnam (CPV) issued policy documents supportive of the private sector, domestic and foreign. In August 2001, the Government signaled its intent to continue to improve the climate for foreign investment when it issued a resolution calling for continued efforts to improve Vietnam's attractiveness to foreign investment in the next five years by:

?expanding of the sectors open to foreign investment, to include real estate, import services and domestic distribution;
?easing conditions for foreign-ownership of equitised state-owned enterprises;
?permitting foreign invested enterprises (FIE's) to issue stock to be sold on the local stock exchange;
?facilitating foreign investors' participation in BOT's;
?narrowing the list of prohibited FIE exports;
?establishing a level playing field among foreign, domestic private and state-owned enterprises; and
?continuing reform of laws and regulations on foreign investment.

Perhaps more significantly, the CPV issued a resolution in March 2002 clearly stating its support for a mixed economy with equal treatment of foreign, private domestic and state-owned enterprises. In this document, the CPV made several important recommendations which, when translated into actual policy, will provide significant support for the private sector in the future including: continuing reforms to make it easier to do private businesses; sses;
eliminating discriminatory treatment of domestic or foreign private sector activity; making clear distinctions between civil and criminal offenses so as to avoid the prevalent criminalization of certain commercial decisions and disputes; simplifying lending procedures to give private enterprise greater access to domestic credit; and amending existing accounting procedures to encourage private enterprise to perform financial audits and disclose the results annually.

On 15 June 2004, the National Assembly passed the Law on Bankruptcy to replace the 1993 Law, effective 15 October 2004. The main objectives of the 2004 Law are to simplify bankruptcy procedures, to allow parties other than creditors to participate in bankruptcy procedures, and to give courts more flexibility in dealing with insolvent businesses. Enterprise bankruptcy is a normal phenomenon in a market economy. It creates favorable conditions for ineffective enterprises and business organizations to exit the market and to be replaced by more effective

ones, making the business environment more healthy and transparent.

The much-anticipated Law on Competition was passed in November 2004 and enters into force on July 1, 2005. The main objective of the Competition Law is to create and promote an equitable and non-discriminative competition environment, and to protect and encourage fair competition. The Law stresses the importance of the rights of organizations and individuals to compete freely within the law. Key elements of the law address anti-competitive agreements, state monopoly, economic concentration and unfair competition. The Law also creates a Competition Management Department under the Ministry of Trade and addresses breaches of the Law. The introduction of a competition law is an important step in the opening of the Vietnamese market to international practices. However, ensuring proper implementation, including training staff and judges, is a crucial step that remains.

As part of Vietnam's efforts to create a level playing field for investors, MPI commenced drafting a Common Investment Law in April 2004. The Common Investment Law would regulate investment guarantee measures, sectors and areas where investment is encouraged, and the investment incentives that are commonly applied to both domestic and foreign investors. To support the Common Investment Law, the Law on Enterprises will also be revised to apply to both foreign and domestic enterprises. The revised Law on Enterprises would regulate establishment forms and procedures, organization, management and dissolution of enterprises of all economic sectors. MPI plans to submit both of the above-mentioned laws to the National Assembly by the end of 2005 and become effective in 2006.

The above actions strongly indicate the Vietnamese leadership's intention to continue to improve the country's foreign investment climate, even if its efforts sometimes fall short. This effort began in 1989 when the country adopted the Law on Foreign Investment (LFI) and has continued with four major amendments of the LFI, the most recent in 2000, and the issuance and amendment of numerous implementing regulations. Most recently, the GVN has issued laws and regulations intended to facilitate foreign investment by reducing or eliminating discrimination against foreign investors in pricing for goods and services, transfer requirements, use of land use rights for mortgaging purposes, unanimity rules applying to certain decisions made by joint venture boards, rights of first sale and many others. Many of these changes were mandated under the BTA.

In spite of these steps, policy does not always translate into concrete action and many additional official measures that discriminate against foreign investment persist. These can be found listed among the permanent exceptions to the non-discrimination obligations contained in the BTA investment chapter. Some must be eliminated at a later date under the BTA; others will remain indefinitely. Additionally, Vietnam continues to impose unofficial and arbitrary measures that negatively affect foreign investors and in some cases, threaten their capital investments.

At present, most foreign importers are barred from direct participation in Vietnam's distribution system, although foreign investors have the right to sell, market, and distribute what they manufacture locally. Foreign investors have the right to import goods needed for their investment projects, provided this right is included in their investment licenses, however, they must import the goods through licensed Vietnamese import/export firms. An exception is made for foreign manufacturers importing inputs directly related to production when such import rights are explicitly included in their investment licenses. Under the BTA, trading rights and market access in distribution services for foreign investors will be gradually expanded. While Vietnam has greatly expanded in recent years the number of Vietnamese firms permitted import/export rights, the vast majority of general import/export companies remain SOE's.

The GVN holds regular 'business forum' meetings with domestic and foreign business associations to discuss issues of importance to the private sector. Foreign investors use these meetings to draw attention to impediments to investment and commerce imposed by Vietnamese law and regulation as well as by improper implementation. These fora, together with frequent

dialogues between GVN officials and foreign investors held between the semi-annual fora, have led to improved communication and have sometimes allowed foreign investors to make timely comments on and influence legal and procedural reforms.

Foreign enterprises also have the right to apply to the Ministry of Trade or the Department of Trade in Hanoi or Ho Chi Minh City for a representative office license, which gives foreign firms the right to conduct market research and to pursue business interests, short of actually selling products and services in Vietnam. Foreign banks must apply to the State Bank of Vietnam for representative office or bank branch licenses.
Previously, Vietnam applied different corporate income tax rates to foreign investors and to domestic enterprises (being 25 percent and 32 percent respectively). The National Assembly in its May 2003 session approved the Ministry of Finance amendments to the Law on Corporate Income Tax, which provide for a uniform rate of 28 percent applied to foreign invested and domestic businesses, representing a three percent increase for foreign invested enterprises and a four percent reduction for domestic companies. Tax incentives will also be the same for both foreign invested and domestic enterprises and will be offered to investors in selected priority sectors and in remote areas. The Amended Law on Corporate Income Tax took effect 1 January 2004. Under this law, Government Decree 164 and Circular 128 of the Ministry of Finance issued in December 2003 abolish the tax on profits remitted by foreign invested enterprises. In response to foreign investors' long-standing complaints about the high personal income tax rates for Vietnamese national employees in the higher pay scales, which significantly increases the gross salary employers must pay to maintain competitive and reasonable take home salaries, the Standing Committee of the National Assembly promulgated Ordinance 14 on Amendments to the Ordinance on Income Tax of High Income Earners in March 2004. Under this legislation, the tax burden on Vietnamese employees was reduced from 1 July 2004.

A-2. CONVERSION AND TRANSFER POLICIES

Vietnam's foreign exchange regime has been significantly improved with the amendments to the LFI (the 2000 Governmental Decree Number 24 and 2003 Decree Number 27), which explicitly gave foreign investors the right to exchange local currency for foreign currency to meet certain current transactions or remit certain categories of earnings. In addition, conversion of Vietnamese dong into hard currency no longer requires a foreign exchange license. Despite these significant improvements, various subsequent decrees and circulars issued by the State Bank continue to stipulate conditions on, among other things, the opening of bank accounts, conversion of Vietnamese Dong into foreign currency, documentation requirements, and remittance of foreign currency in and out of the country.

Foreign businesses are allowed to remit profits, shared revenues from joint-ventures, income from services and technology transfers, legally-owned capital and properties in hard currency. Foreigners also are allowed to remit abroad royalties and fees paid for the supply of technologies and services, principal and interest on loans obtained for business operations, and investment capital and other money and assets under their legitimate ownership. But their ability to convert dong into hard currency is subject to availability, causing Foreign-invested-enterprises (FIEs) to experience problems in securing hard currency. No information on average delays in remitting investment returns is available. Approval by investment authorities is needed to increase or decrease the capital of a foreign-invested business.

In principle, most FIEs are expected to be 'self-sufficient' for their foreign exchange requirements, although this sometimes proves impractical. Government of Vietnam guarantees to assist in the balancing of foreign currency for foreign invested enterprises and foreign business cooperation parties that invest in the construction of infrastructure and certain other important projects in the event that banks permitted to trade foreign currency are unable to fully satisfy their foreign currency demand.
A-3. EXPROPRIATION AND COMPENSATION

The U.S. Embassy knows of no recent instances of expropriation of a foreign investment by the

Government of Vietnam.

Under the BTA, in any future case of expropriation or nationalization of U.S. investor assets, Vietnam will be obligated to apply international standards of treatment - that is taking such an action for a public purpose; in a non-discriminatory manner; in accordance with due process of law; and with payment of prompt, adequate and effective compensation.

A-4 DISPUTE SETTLEMENT

Vietnam's legal system, including dispute and claims settlement mechanisms, remains underdeveloped and sometimes biased against foreign entities. Negotiation between the concerned parties is the most common and preferred means of dispute resolution. Although contracts are extremely difficult to enforce in Vietnam, particularly if one party to a dispute is a foreigner, investors generally should negotiate and include dispute resolution procedures in their contracts. However, even with such provisions, resolution is not guaranteed.

In the event of an investment dispute, a number of domestic avenues are available. Economic courts, in addition to hearing bankruptcy cases, also have jurisdiction over cases involving business disputes. Administrative courts hear cases that concern alleged infractions of administrative procedures by government authorities. In such cases, the plaintiff must pay a bond to the court, half of which is forfeited if the dispute is resolved before the beginning of court proceedings. Also, the court proceedings must begin within six months of the date of the dispute. Many international investors express concerns about the ability of the court system to render impartially and promptly a decision that accurately reflects the facts and properly interprets the relevant Vietnamese law and/or international law and practice. Thus, they prefer to have other options available to them. According to Vietnamese press accounts, many court judgments on business issues are ignored because the affected party can use "influence" to forestall the application of the judgment.

Outside of the court system, economic arbitration centers operate in a number of provinces and cities. However, it is not clear if these centers are legally competent to settle disputes involving foreign parties. Another type of arbitration institution in Vietnam is the Vietnam International Arbitration Center (VIAC), which operates in close coordination with the Vietnam Chamber of Commerce and Industry (VCCI). It has authority to settle disputes arising from international economic transactions including contracts on foreign trade and investment. However, it is not clear if investors would be free to choose foreign arbitrators. Nor can international standard arbitration rules, such as those of the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL), be used. The decisions of the VIAC are final and cannot be appealed to any domestic court. The center does not yet have an established track record for competence or impartiality, and questions have been raised about the enforceability of its awards. For now, most foreign parties choose to stipulate "third party" arbitration in their contracts with Vietnamese parties and the government.

Foreign and domestic arbitral awards are technically legally enforceable in Vietnam. Vietnam acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1995, meaning that foreign arbitral awards rendered by a recognized international arbitration institution must be respected by Vietnamese courts without a review of the case's merit. In practice, however, the U.S. Embassy is aware of contradicting judgments and decisions by different Vietnamese courts with regards to a foreign arbitral award for a case between a subsidiary of a U.S. firm and an Australian-Vietnamese joint venture. The foreign arbitral award was recognized by a municipal Economic Court, but was subsequently reversed by the Supreme Court (the highest judicial level) upon appeal. The Supreme Court rearbitrated the case in Vietnam (contrary to the agreed upon procedures in the contract) and ruled that as a construction contract did not fit the narrow definition of commercial contract found in the Commercial Code, a foreign arbitral award relating to it could not be enforced in Vietnam. The results of this case indicated that the enforceability of a

foreign arbitral award in Vietnam currently remains questionable. In February 2003, the National Assembly passed the Ordinance on Commercial Arbitration. The ordinance defines "commercial activities" more broadly to include, inter alia, leasing, construction, consultancy, licensing, investment, financing, banking, insurance, exploration, mining activities and transportation. But, this ordinance has not yet been tested and it is not yet clear whether this change will positively affect the way courts address these issues.

Under the investment chapter of the BTA, Vietnam gives U.S. investors the right to choose a variety of third party dispute settlement mechanisms in the event of an investment dispute with the GVN. Vietnam has not yet acceded to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID), but has asked the U.S. to provide advice in this area as part of the U.S. technical assistance program designed to assist Vietnam to fully implement the BTA.

Up until recently, exit strategies for foreign investors have been limited and problematic. Since the original Law on Business Bankruptcy was issued in December 1993 ("1993 Law"), only 61 bankruptcy cases have been brought to court. The small number of bankruptcy cases is due largely to the deficiencies of the 1993 Law. The new Bankruptcy Law, in effect beginning October 2004, attempts to simplify bankruptcy definitions and procedures to give both investors and the courts more flexibility in resolving insolvency.

A-5 PERFORMANCE REQUIREMENTS/INCENTIVES

While Vietnam is not yet a member of the World Trade Organization (WTO), under the BTA Vietnam is obligated to gradually discontinue application of any trade-related investment measures (TRIMS) or performance requirements inconsistent with the WTO TRIMS agreement. Vietnam currently imposes a number of performance requirements with respect to the establishment of an investment and/or the receipt of a benefit or incentive. Under the terms of the BTA, Vietnam retained the right to require that an investment project export at least eighty percent of its production for seven years in the following sectors: cement; paint; bathroom tiles and ceramics; PVC and other plastics; footwear; clothing; construction steel; detergent powder; tires and inner tubes for cars and motorbikes; NPK fertilizer; alcoholic products; tobacco; and paper. In December 2001, Ministry of Planning and Investment issued Decision 718 revising the list of products subject to an export requirement. However, many of the products identified in Decision 718 are not in the list agreed upon in the BTA. According to Decision 718, Vietnam currently has an eighty percent export requirement for: motorcycles; minibuses and trucks (less than 10 ton); some irrigating pumps; medium voltage, low voltage and normal electric transmission cables; cargo ships, audio-visual products; aluminum profiles products; construction glass; NPK fertilizer; PVC; bicycles and bicycle parts; transformers under 35 KV; and diesel motors under 15 CV.

Vietnam also requires foreign investors in some sectors to use local content. This is particularly applied to foreign investment in electronics, motorcycle and automobile sectors as stipulated in Decision 648 issued in 1999 by the Ministry of Science Technology and Environment. Other sector requiring the use of local raw materials include sugar, paper, vegetable oil, wood processing and milk. The BTA stipulates Vietnam must phase out several TRIMS-inconsistent local content requirements within five years or less of the BTA's entry-into-force. Vietnam has eliminated trade-balancing requirements previously imposed through restrictions on the importation of goods used for production by foreign investors. In the same vein, it has removed foreign exchange balancing requirements. Under the BTA, Vietnam is also obligated to refrain from imposing requirements to transfer technology as a condition for the establishment, expansion, acquisition, management, conduct or operation of an investment.

The GVN employs an extensive range of incentives in an attempt to attract foreign investment into certain priority sectors or geographical regions. The LFI and subsequent decrees authorize MPI to 'encourage investment in mountainous and remote areas' of the

country and in regions with 'difficult economic and social conditions'. MPI also encourages investment in export production, agricultural and forestry production, high technology, ecology, research and development, labor-intensive processing of raw materials, and large industrial and/or infrastructure projects. The law also favors to a lesser degree, investments in metallurgy, basic chemicals, petrochemicals, fertilizer manufacture, manufacturing (especially electronic components and car and motorbike parts), and planting industrial crops. Under Circulars 1817 and 1818 (1999), the Ministry of Science, Technology, and Environment (MOSTE) also encourages projects in the areas of treatment of environmental pollution and waste, production of new or rare and precious materials, application of new biological technology, application of new technology for manufacturing communication and telecommunication equipment, and electronic and informatics technology. More recently, the GVN opened the healthcare and education sectors more widely to foreign investment and began providing a variety of incentives for such investment. Although the GVN encourages investment in the provinces, enforcement of investor protections and BTA rights with Provincial Authorities has proven difficult at best. Investors should use due diligence when working at the Provincial or local levels.

Depending on the sector, FIEs and foreign parties to a BCC may be exempted from profits tax for a maximum period of two years commencing from the first profit-making year and may be allowed a 50 percent reduction of profits tax for a maximum period of two consecutive years. Certain 'encouraged' projects may be exempted from profit tax for up to four years from their first profitable year and may be allowed a 50 percent reduction of profits tax for a further four years. Where the investment is 'especially encouraged,' the maximum period of tax exemption shall be eight years. Such exemptions are generally written into a company's investment license.

The law on export and import duties specifies the rates which FIEs and parties to BCC's must pay on exports and imports. Equipment, machinery, specialized means of transportation, components and spare parts for machinery and equipment, raw materials and inputs for manufacturing, and construction materials that cannot be produced domestically, which are imported to Vietnam to form fixed assets of an FIE or a BCC are exempted from import duties. Other exemptions or reductions of import and export duties can be stipulated by the GVN for 'encouraged' projects and are also generally contained in an enterprise's investment license Other special incentives are available to foreign investors in build-operate-transfer (BOT) projects and projects located in export processing zones (EPZ), industrial zone (IZ) and high tech zones (HTZ). BOTs may be joint ventures or 100 percent foreign-owned. They are exempt from land tax and from payment of duties on goods imported to implement the contracts. They enjoy a lower profits tax rate (10 percent), a five percent withholding tax rate (the lowest normal rate), an eight-year tax holiday starting from the first profitable year, and a government guarantee for conversion of revenue from local to foreign currency. The term of a BOT can extend to 50 years, after which project ownership reverts to the government.

Projects in EPZs are entitled to profit tax rates of 10-12 percent for the duration of the investments. EPZs were the first production zones developed in Vietnam, but interest in them has been less than anticipated due to inadequate infrastructure and a requirement that these firms export 100 percent of their product. Ho Chi Minh City's Tan Thuan Zone is Vietnam's largest EPZ, while others are planned or in operation in Danang, Can Tho, Hanoi, and Ho Chi Minh City. Export-producing firms wishing to operate in an EPZ apply for licenses and pay taxes directly to the EPZ management boards, which streamlines the process. Imports of machinery and raw materials enter the zones duty-free, and EPZ firms sometimes also benefit from lower rents, fewer regulations, and a variety of tax incentives.

IZs are open to companies engaged in construction, manufacturing, processing or assembly of industrial products, and service to support industrial production. Companies submit license applications and pay taxes directly to the IZ management boards. IZ firms also are eligible for certain tax benefits, including a 10 percent profit tax for the duration of

the investment. Companies that reinvest profits may be eligible for refund of profit taxes. Foreign-invested automobile manufacturing projects are subject to local content requirements in their investment licenses.

Vietnam has also instituted a number of incentives designed to attract investment from foreign investors of Vietnamese origin. They are allowed to choose to operate under domestic, as opposed to foreign, business licenses, although they may choose to operate as a foreign business where doing so would be advantageous to them. The land law has also been amended to permit limited categories of these investors to buy land use rights to build homes, which other foreigners are not permitted to do. However, the GVN often does not recognize the adopted nationality of many Vietnamese origin persons unless they have formally renounced their Vietnamese citizenship and may consider them to be Vietnamese nationals. U.S. investors of Vietnamese origin should consult the U.S. Embassy in Hanoi or the U.S Consulate General in Ho Chi Minh City for more information.

A-6. RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

Until the late-1980's, the Vietnamese economy was organized according to principles of socialist central planning. Since then, the government has moved to develop a market-oriented economy and has formally recognized the existence of the private sector. In recent years, the private sector, foreign and domestic and, to a lesser extent, a small collective sector have begun to play greater roles in the economy, although current policy dictates that the state sector will continue to "play a leading role" in the economy.

SOEs continue to dominate the industrial economy of Vietnam. A large majority of these SOEs suffer from weak finances, high debt, obsolete plant and equipment, poor management, poorly trained staff, low labor productivity, and low product quality. According to the National Steering Committee for Enterprise Reform and Development (NSCERD), as of December 31, 2004, Vietnam has approximately 3,300 SOEs, down from around 12,000 in the early 1990's. NSCERD estimates that 50 percent of the remaining SOEs are incurring losses.

As part of its 2001 economic reform agreement with the World Bank and the IMF, the GVN committed to equitise roughly one-third of the current SOEs over three years and ensure that those remaining become competitive. However, actual implementation of the reform program has been slower than planned. In addition, many international observers expressed disappointment that the government did not agree to completely dismantle its SOE sector over time. Especially disconcerting to these observers is the Socio-economic Strategy for 2001-2010 which reconfirms the "leading role" of the state enterprise sector and instructs the government to retain and improve SOE operations in broad range of sectors which hold considerable interest for the international investor, including telecommunications, banking, insurance, petroleum and more. At the same time, however, the GVN has instructed agencies and ministries to restructure or dissolve loss-making SOEs.

A vibrant private sector is emerging in Vietnam. Dozens of large-scale Vietnamese private enterprises and tens of thousands small and medium sized firms now exist. The single most crucial GVN action in supporting of the development of the domestic private sector was the enactment, in January 2000, of the Enterprise Law, which provided, for the first time, simplified domestic business registration rather than discretionary government approval and licensing. At the end of 1999, official statistics counted 45,000 companies in the formal domestic private sector. Since, then over 120,000 enterprises have been registered, the large majority of which are new enterprises. The rest were previously-existing firms that moved from the informal to the formal sector. Also, as part of implementation of the new law, the GVN has moved to abolish nearly 200 "unnecessary" permits required by various ministries and localities for operation of a business. Unfortunately, these agencies keep adding to the list of these "baby permits" in an effort to re-establish control over issues they previously influenced via the licensing system. Domestic private enterprises have created

substantial new employment in Vietnam, while employment in the state sector has been stagnant or declining.

Private firms, however, continue to be severely disadvantaged relative to SOEs in terms of access to credit and land, and in legal and regulatory treatment. Private firms face restrictions in using land use rights for joint ventures with foreign investors. SOEs also receive most of the lending from state-owned banks, which dominate the banking sector. In general, despite these restrictions, the relatively larger private firms that are emerging in Vietnam operate with better management and greater efficiency than the SOEs. Moreover, high-ranking government officials have stated the GVN's intention to put foreign and domestic investment on more or less even footing with SOEs with respect to access to credit, legal and regulatory treatment, pricing, and fees. However, SOEs are likely to retain better access to land and will continue to be expected to "dominate" in key sectors as identified by the political leadership.

A-7. PROTECTION OF PROPERTY RIGHTS

The Vietnamese legal system is in a state of transition to support a more market-oriented economy and undergoes frequent and at times significant change. The rudiments of a legal system that protects and facilitates property rights have been established. But much more work needs to develop the laws and enforcement mechanisms needed to adequately protect property rights in Vietnam.

All land in Vietnam belongs to "the people", administered or managed by the State. Private land use rights (LURs) were established for the first time in 1988 when agricultural land was decollectivized and land use rights were granted to households. A LUR is a State-granted right to use land for a specific purpose. The 1992 constitution granted stronger land rights to individuals, including rights over commercial and personal property. LURs may be granted for up to 50 years, depending on the specific use of the land. Individual holders of LURs can sell them if they move to a new location, change jobs, or are unable to work. In the 1993 Land Law, the National Assembly broadened LURs to include rights to exchange, transfer, rent, inherit, and mortgage land. In 1998 several additional changes to the land law were enacted, primarily to distinguish between corporate leaseholders, who can use their land for domestic or foreign joint ventures, and individual leaseholders who are not permitted to enter joint ventures with foreign entities.

Additional amendments to the land law in 2001 and subsequent implementing regulations decentralized authority for leasing land to businesses and permitted local officials to lease land to foreign organizations, individuals and overseas Vietnamese. Still, foreign investors can currently only lease land from the Government or in industrial parks. These limitations may soon be lifted. Government Resolution Number 2 issued in January 2003, proposed allowing domestic private companies with long-term land use rights to lease their land to foreign investors, provided that the lease is not longer than the rights held by the leaser. The new Land Law passed by the National Assembly in November 2003 and in effect from 1 July 2004 allows domestic private companies with long-term land use rights to lease their land to foreign investors. Permission, however, is subject to approval of the authorities who grant the land use rights to the leaser, and the continued requirement that a lease cannot be longer than the rights held by the leaser.

Vietnamese LUR-holders have the right to mortgage them, but Vietnamese banks generally value land at a maximum of 70 percent of the total rent already paid on the property, not the property's appraised value. As organizations only were obliged to begin paying rent in February 1995, the values of mortgages on land are not large, which limits their usefulness for property-based project finance. The amended LFI permits foreign banks branches to accept mortgages of land use rights. But to date, widespread use of collateralized bank loan actions have been hampered by a lack of central registration for mortgaged assets. Foreign banks also want to see an amendment to the land law to permit them to take possession of the land after a foreclosure, and amendments to banking regulations. In March 2002, a good first

step was made when the New National Register for Secured Transactions opened for business in Hanoi and Ho Chi Minh City. But the registry does not have jurisdiction over land-use rights or buildings, assets that remain under the control of local authorities and the enforceability of collateral in the form of LUR and property remains uncertain. The National Register for Secured Transactions is working on a draft law on registration of immovable assets that is intended to give the registry jurisdiction over land-use rights of buildings and assets. MPI plans to present the draft law to the National Assembly for consideration by the end 2005.

IPR infringement continues to be widespread and enforcement of administrative orders and court decisions finding IPR infringement remains problematic. Vietnam is a member of the World Intellectual Property Organization (WIPO) and is a signatory to the Paris Convention for Industrial Property. It has acceded to the Patent Cooperation Treaty and the Madrid Agreement. In June 2004, Vietnam decided to join the Berne Convention on Copyright Protection for Literary and Artistic Works. On October 26, 2004, Vietnam became the 156th full-fledged member of the Convention, which is the country's first multilateral copyright agreement. The U.S.-Vietnam Bilateral Copyright agreement obligates Vietnam to provide U.S. copyrights protection on a national treatment basis in accordance with the terms of the Berne Convention. Under the terms of the BTA, Vietnam was obligated to make its system for protecting intellectual property rights (IPR), including enforcement, consistent with the WTO TRIPS agreement by December 10, 2003. Although considerable progress has been made over the past several years, with new regulations expanding legal protection to areas previously not covered, such as business secrets and new plant varieties, much remains to be done. New legislation this year included more detailed regulations on plant varieties and administration sanctions against counterfeits. The Government has instructed the Ministry of Science and Technology (MOST) and the Ministry of Culture and Information (MOCI) to draft a separate Law on Intellectual Property Rights, which is planned to submit to the National Assembly for approval in 2005.

Vietnam's laws offer some protection for foreign patent holders, but there are infringements. Potential investors should contact the U.S. Embassy in Hanoi or the Consulate General in Ho Chi Minh City for the latest information regarding the ongoing changes to IPR protection in Vietnam. The National Office of Intellectual Property (NOIP), under Ministry of Science and Technology, administers Vietnam's patent and trademark registration system. The Vietnam Office of Literary and Artistic Copyright, under the control and supervision of the Ministry of Culture and Information, oversees artistic copyright. Significant progress has been made putting in place the laws protect copyrights including those belonging to foreigners but enforcement is almost non-existent. Since joining the Berne Convention, MOCI tightened copyright regulations on foreign musical and theatrical works. All organizers must obtain permission in writing from the copyright holders before performing their works.

Enforcement of IPR remains weak and violations of IPR are rampant. While Vietnam recently has conducted considerable administrative and law enforcement actions against IPR violations, IPR enforcement remains the exception rather than the rule. For some types of products, such as PC software, music and video CDs, VCDs and DVDs, as well as brand trademark violations, such as logos on t-shirts and other consumer items, IPR enforcement is virtually non-existent. Industry estimates of piracy rates for software, music and video, run as high as 99 percent. Local police authorities often are slow to act on administrative orders finding infringement and court decisions. Violators sometimes negotiate with plaintiffs, demanding payoffs to stop producing pirated material. However, there is the beginning of some progress with increased awareness of the need for effective IPR enforcement to foster investment, both foreign and domestic, in sectors such as software development and the arts. In addition, Vietnamese authorities are becoming increasingly concerned that the proliferation of pirated products also undermines their ability to prevent the distribution of pornography and other illegal content.

A-8. TRANSPARENCY OF THE REGULATORY SYSTEM

As Vietnam undergoes a transition to a more market-oriented economy, the legal system changes frequently, and at times, significantly. Vietnamese officials have limited experience drafting legislation, and new laws and regulations sometimes are contradictory or unclear. Not all officials, especially those at the provincial and local levels, are fully up-to-date on all the new laws and regulations that affect their area of responsibility. Nor are all laws and regulations readily available to business and the public. Different officials, sometimes within the same agency, may interpret laws differently. There is a shortage of practicing lawyers, law school graduate judges, and law professors. Substantial foreign assistance is being devoted to assist Vietnam to establish a legal structure compatible with international standards.

Although the Vietnamese government has begun to streamline and rationalize the investment licensing process over the past year, MPI and other national, provincial, and local government agencies retain a great deal of discretionary authority. U.S. and other investors frequently encounter the need for further negotiation and administrative processes after the licensing process has been completed. A general lack of transparency in law and regulation make it difficult not only to exercise rights, but even to be aware of what rules apply to an investment. In recent years, Vietnam has improved its process for making and publicizing laws, but beyond major national laws and regulations, much rule-making affecting foreign investors still occurs at the ministerial, sub-ministerial and local levels, without any regular process for public notification and little possibility for advance warning of changes in rules or for public input during the rule-making process. In 2002 the GVN amended the Law on the Promulgation of Legal Normative Documents to require that all legal documents and agreements to international conventions be published in the Official Gazette. As of July 2003, the Official Gazette has been published on a daily basis. The number of laws and regulations published in the Official Gazette each year has increased from just 4,200 in 2002 to 16, 510 in 2004.

Under the BTA, Vietnam is obligated to publish promptly all existing and future laws, regulations and administrative procedures which might affect any matter covered under the agreement including investment and trade in goods and services. The BTA further commits Vietnam to enforce only laws, regulations or administrative practices that have been so published and to publicize such laws sufficiently in advance of their effectiveness to ensure U.S. investors have adequate time to adjust their operations accordingly. Vietnam has committed to provide a process by which the U.S. Government and U.S. nationals have the ability to provide their views to the GVN on any such laws, regulations or administrative practices while they are still being formulated. Finally, U.S. nationals have the right to appeal administrative action relating to matters relating to the agreement. In December 2002, the National Assembly passed the "Law on Legal Normative Documents". Although this Law meets some of its BTA commitments, the GVN is not yet in full compliance with these obligations, in particular regarding prior notice and consultation on proposed regulatory and legal changes.

A-9. EFFICIENT CAPITAL MARKETS/PORTFOLIO INVESTMENT

Vietnam' financial system is in the early stages of reform and is not yet an efficient allocator of financial resources. At least 50 percent of personal savings are held as cash, gold, or other assets outside the banking system. However, as part of its World Bank/IMF program, the GVN adopted a comprehensive banking reform program that relies on market-based action which is intended to ensure the stability of the banking system, and in the medium-to-long term, promote better mobilization of domestic resources by improving allocation of those resources to commercially viable activities, and expand banking services throughout Vietnam. Raising capital for development is one of Vietnam's main economic priorities.

Foreign investors generally meet their foreign currency credit needs offshore or with foreign bank branches, although availability of foreign currency to convert dong assets to cover dollar liabilities can be, at times, uncertain. Foreign banks are

severely limited in their right to take dong deposits and frequently encounter difficulties meeting customer's dong cash and credit needs. However, under the BTA, U.S. banks now enjoy a more liberal policy on dong deposits. In response to strong lobbying from non-US foreign banks to get the same treatment as US banks, in April 2004 the State Bank of Vietnam issued Decision 327 raising the ratio of dong deposit for foreign banks coming from the European Union, giving them the same competitive edge as US banks. This ratio, however, does not change for other non- European Union or non-US foreign banks. The State Bank and the Ministry of Finance have conducted sales of state bonds denominated in local currency, but Vietnam only has an informal secondary market for such instruments.

The banking industry in Vietnam is characterized by its small size in terms of deposits and loans and by the relatively large number of banks, both foreign and domestic. However, four state-owned commercial banks (SOCB) the Vietnam Bank of Foreign Trade (Vietcombank), the Vietnam Industrial and Commercial Bank (Incombank), the Bank for Agriculture and Rural Development, and the Vietnam Investment Bank still dominate domestic banking activity, providing an estimated 75 percent of all lending. Most SOCBs and joint stock banks (i.e., private sector banks with numerous shareholders) are under-capitalized, particularly when non-performing loans are taken into account. State-directed lending under non-commercial criteria also weakens banks in Vietnam. Furthermore, banks in Vietnam, including the four state-owned banks, hold a large number of non-performing loans, mainly to SOEs. As transparent auditing and financial reporting is problematic, it is difficult to know the exact proportion of non-performing loans. Sources vary widely, with estimates of bad loans ranging from 4 percent to 30 percent.

In 1997, the government introduced a new accounting standard, the 'Vietnamese accounting system.' The Ministry of Finance continues to refine and amend this standard to bring it into consistency with international accounting standards. After a multi-year grace period, foreign banks and companies are now required to comply fully with its parameters. A number of major international accounting firms have opened offices in Vietnam and, unlike foreign law firms (which are subjected to restrictions including advising clients on Vietnamese law and hiring Vietnamese lawyers), can provide advice on accounting and business issues directly to foreign clients in Vietnam. Nonetheless, a continued lack of financial transparency and compliance with internationally accepted standards among Vietnamese firms continues to pose problems for the government's plan to expand stock and securities markets to raise capital internally.

Despite these challenges and after years of discussion and planning, Vietnam opened a stock market in July 2000. A total of 25 joint stock companies, primarily former SOE's now under a restructuring/equitisation program, have listed on the exchange. None of them play major roles in the economy. Under current market regulations, share prices of a listed company cannot increase or decrease by more than five percent per trading session. To date, with its small trading volume, and restrictive rules on both listing and investor participation, the nascent market has yet to become a real source for financing or intermediation.

Formerly, foreign organizations and individuals can only hold a maximum of 30 percent of total shares issued by a listed company. As part of its efforts to encourage foreign investment and to promote the development of the infant stock market, the Government issued Decision 146 in July 2003 abolishing the equity limit of a single foreign investor (institutional or individual) in a listed Vietnamese company. MPI maintains a list of sectors and business lines in which foreigners may purchase shares in Vietnamese private enterprises in an effort to encourage private domestic enterprises to list and foreign investors to buy shares. In April 2002, the latest version of this list was issued. It includes selected commercial activities in five broad areas: agriculture, forestry and aquaculture; industry and processing; hotels and restaurants; transport, warehousing and communications; and science, technology, health care and education.

In March 2003, the Government issued Decision 36/QD-BKH revising the regulations on foreign shareholding

in Vietnamese companies that are not listed on the Vietnam stock market. The new Decision governs purchase of shares and capital contributions by the following foreign investors:

?Foreign economic and financial organizations established pursuant to foreign law and conducting business overseas or in Vietnam;
?Non-resident foreigners in Vietnam;
?Foreigners who reside, earn their living and live long-term in Vietnam;
?Overseas Vietnamese

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An important reform is that Prime Minister's approval is no longer required for the sale of shares to foreign investors. However the maximum level of capital contribution and purchase of shares by any one or more foreign investor in Vietnamese companies is still capped at 30 percent of the charter capital of the Vietnamese companies. The Ministry of Finance recently has been assigned by the Government to review and revise this restriction toward raising the 30% cap on foreign equity in Vietnamese companies.

A handful of regional and Vietnam-specific investment funds were set up to invest in Vietnam following the lifting of the U.S. trade embargo in 1994, but their results have mostly been poor. After promising beginnings in 1995, by 1998 shares in some of the funds were trading at an average discount of nearly 50 percent, and some were forced significantly to write down the value of their portfolios, while most failed to fully invest the funds raised for Vietnam due to a dearth of attractive opportunities. The continuing lack of a developed stock market means such funds do not have access to portfolio investment and must seek out private equity opportunities.

A-10. POLITICAL VIOLENCE

Vietnam is undertaking an ambitious course of transition both domestically and internationally, but remains essentially stable under the continued leadership of the Communist Party of Vietnam (CPV). As the country proceeds with its transition from a centrally-directed economy to a more genuinely market-based economy, a process which began in the late 1980's, the GVN and the CPV have, at the same time, reduced official interference in private lives of citizens and have permitted a broad expansion of personal liberties. But the GVN remains a one-Party state that brooks no overt criticism of the GVN or CPV and continues to restrict freedoms of religion, speech, assembly, and press, while denying true choice of political system or leaders. There are no signs of active opposition to the GVN or CPV, however, and most Vietnamese appear satisfied with the economic and social improvements of the last 16 years. There have nonetheless been isolated protests, such as large demonstrations by ethnic minorities in the Central Highlands in 2004 and smaller gatherings at the semi-annual meetings of the National Assembly by a variety of disaffected individuals.

A-11 CORRUPTION

U.S. and other foreign firms as well as domestic private sector firms, have identified corruption in Vietnam in all phases of business operations as an obstacle to their business activities. In 2004, Vietnam scored a 2.6 out of a possible high score of 10 points on Transparency International's Corruption Perception Index. This placed Vietnam's rank at 102 out of 146 countries, behind neighbors Malaysia and Thailand but above Indonesia. In large part due to a lack of transparency, accountability, and media freedom, widespread official corruption and inefficient bureaucracy remain serious problems that even the CPV and GVN admit they must address squarely and soon. Competition among government agencies for control over business and investments has created confused overlapping of jurisdictions and bureaucratic procedures and approvals that in turn create opportunities for corruption. Low pay for government officials and woefully inadequate systems for holding officials accountable for their actions compound the problems. Implementation the GVN's Public Administration Reform, developed in with the assistance of the World Bank, and the country's obligations under the transparency provisions of the BTA promise some improvement in the situation. But

it appears unlikely that they will be successful in this effort to eliminate corruption the near term.

¶B. BILATERAL INVESTMENT AGREEMENTS

Vietnam has 46 bilateral investment agreements with the following countries and territories: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium and Luxembourg, Bulgaria, Burma, Chile, China, Cuba, Czech Republic, Cambodia, Denmark, Egypt, Finland, France, Germany, Hungary, Iceland, India, Indonesia, Italy, Japan, Laos, Latvia, Lithuania, Malaysia, Mongolia, Netherlands, North Korea, Philippines, Poland, Romania, Russia, Singapore, South Korea, Sweden, Switzerland, Taiwan, Tajikistan, Thailand, Ukraine, United Kingdom, and Uzbekistan. Vietnam has not concluded a Bilateral Investment Treaty (BIT) with the U.S., but the BTA contains an investment chapter that closely resembles U.S. BITs and contains most of the principal obligations common to such agreements. Vietnam also does not have bilateral taxation treaty with the U.S.

¶C. OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

In March 19, 1998, OPIC signed a new bilateral agreement with Vietnam, providing protections and guaranties necessary for OPIC to operate in Vietnam for the first time in more than twenty years. Subsequently, on November 19, 2000, President Clinton delivered remarks to the Vietnamese business community. At the core of his remarks was the announcement that OPIC was creating a special US$ 200 million line of credit to support private sector projects in Vietnam. As of December 2004, OPIC had signed one active insurance contract and one lending contract in Vietnam. OPIC is reviewing several applications to support other potential projects.

Vietnam joined the Multilateral Investment Guarantee Agency (MIGA) in 1995.

¶D. LABOR

One of Vietnam's principal attractions for foreign investors has been its large, relatively well-educated (the GVN reports a literacy rate of over 90 percent) and inexpensive labor force. Now estimated at 43 million, the labor pool continues to increase by 1-1.5 million workers annually due to the post-war population explosion.

Despite its attractions, labor in Vietnam poses some problems for foreign investors. There is a shortage of managerial talent and skilled workers, resulting in higher salaries for those employees. Another factor raising the cost of skilled and managerial workers is Vietnam's sharply progressive personal income tax system that results in labor costs 2-3 times higher than in other Asian countries for relatively high-paid local staff. In March 2004 the Standing Committee of the National Assembly promulgated Ordinance 14 on Amendments to the Ordinance on Income Tax of High Income Earners. Under this legislation, the tax burden on Vietnamese employees was reduced effective 1 July 2004. Key changes included the broadening of tax brackets and removal of the top marginal income tax rate of 50 percent.

Under two 1999 directives, foreign organizations, including FIEs, must recruit and hire staff through state-owned employment bureaus, a requirement many investors find onerous. Under amendments to the Labor Law that entered into force on January 1, 2003, FIEs and foreign business cooperation parties are now allowed to directly recruit Vietnamese workers and foreigners. However, the requirement to use such employment service agencies will continue to apply to branches and representative offices of foreign companies, foreign non-governmental organizations and foreign diplomatic missions.

Employers are required by law to establish labor unions within six months of establishment of the company. All labor unions must be members of the Vietnam General Confederation of Labor, an organization under the Communist Party-affiliated Fatherland Front. There were, 96 labor strikes in 2004, according to latest statistics. Strikes took place in SOEs, FIEs, and domestic private companies, with the majority occurring at FIEs. There were no known strikes at U.S.-invested companies. Most of the strikes involved labor-management disputes over health, safety, or other working conditions, work hours, or late payment of wages, and were settled quickly.

Vietnam is a member of the International Labor Organization (ILO). As of May 2003, it had ratified three of the eight core labor conventions: 100 (Equal Remuneration); 111 (Non-discrimination in Employment); and 182 (Worst Forms of Child Labor). Vietnam ratified the first two conventions on October 7, 1997 and the last on December 19, 2000. Vietnam has not ratified ILO Conventions on freedom of association, protection of the right to organize and collective bargaining. However, under the Declaration on Fundamental Principles and Rights to Work, all ILO members, including Vietnam, have pledged to respect and promote all the core ILO labor standards, including those on association, right to organize and collective bargaining. A number of technical assistance projects in the field of labor sponsored by foreign donors are underway in Vietnam, including work by the ILO supported by the U.S. Department of Labor. Vietnam intends to ratify Conventions 29 and 105 on forced labor in 2005.

¶E. FOREIGN TRADE ZONES/FREE PORTS

Companies may choose to produce within an export-processing zone (EPZ) to take advantage of exemptions from customs duties for equipment, raw materials, and commodities imported into the zones, and for finished goods and products exported from the zones, subject to specific provisions regulating EPZs. All of the production within an EPZ must be exported. Industrial zones (IZs) have been developed to offer tax advantages for establishing factories within the zones. Companies can produce within an IZ for the domestic market or for export. The companies pay no duties when importing raw materials, if the end products are exported.

From the establishment of its first EPZ in 1991 through December 2004, Vietnam established a total of 112 IZs and EPZs. As of December 2004, there were 1,542 foreign invested enterprises licensed in the zones with a total registered capital of US$ 13.4 billion, of which over US$ 7.4 billion has been implemented. Many foreign investors commented that it is faster and more convenient to implement their projects in the industrial zones than outside the zones as the land use is already planned and they do not have to be involved in site clearance, compensation works and the construction of necessary infrastructure, which are time consuming and sometimes difficult. Foreign investment in the industrial zones currently concentrates on light industry projects, such as food processing and textile and garments. The number of heavy industry projects is still modest.

The operation of customs warehouses was approved in ¶1994. There are bonded warehouses in Can Tho, Hai Phong, Ho Chi Minh City, Hanoi, Quang Ninh, Binh Duong, Dong Nai, An Giang and Vung Tau. Entities permitted to lease customs bonded warehouses are foreign enterprises, individuals, and overseas Vietnamese; Vietnamese import-export license companies; and FIEs licensed to perform import-export activities. Most goods pending import and domestic goods pending export can be deposited in bonded warehouses under the supervision of the provincial customs office. Exceptions include goods prohibited from import or export, Vietnamese-made goods with fraudulent trademarks or labels, goods of unknown origin, and goods dangerous or harmful to the public or environment. The lease contract must be registered with the customs bond unit at least 24 hours prior to the arrival of goods at the port. Documents required are a notarized copy of authorization of the holder to receive the goods, a notarized copy of the warehouse lease contract, the bill of lading, a certificate of origin, a packing list, and customs declaration forms. Owners of the goods pay import or export tax when the goods are removed from the bonded warehouse.

Customs warehouse keepers can provide transportation services and act as distributors for the goods deposited. Additional services relating to customs declaration, appraisal, insurance, reprocessing or packaging require the approval of the provincial customs office. In practice the level of service needs improvement. The time involved for clearance and delivery can be lengthy and unpredictable.

¶F. FOREIGN DIRECT INVESTMENT STATISTICS

Year Avg. capital Number Licensed

Implemented per project of
Capital capital
(Mil US$) projects (Bill US$) (Bill US$)

1992	10.5193	2.027	0.478
1993	9.5272	2.588	0.871
1994	10.3 362	3.746	1.936
1995	16.4 404	6.607	2.363
1996	23.5367	8.640	2.923
1997	14.0333	4.659	3.137
1998	15.0260	3.897	2.364
1999	5.2298	1.568	2.179
2000	5.8 344	2.014	2.228
2001	5.3461	2.521	2.300
2002	1.97697	1.376	N/A
2003	2.55752	1.914	2.685
2004	3.07 723	2.222	2.900

Note: Authorities have been steadily adjusting the
1.914 2.685
2004 3.07 723
2.222 2.900
Note: Authorities have been steadily adjusting the
final figures for investment inflows for recent years upwards. It is not clear whether these adjustments reflect additional information that has become available to investment authorities or if they reflect an attempt to make the investment downturn in the wake of the Asian financial crisis appear less severe.

The licensed capital statistics for 1997 and 1998 may be overstated. A Singapore-invested resort complex in 1997 worth US$ 700 million is unlikely to be completed in the foreseeable future, and the Russian partner has recently pulled out of a joint venture petroleum refinery project licensed in 1998 worth US$ 1.3 billion. Absent these projects, the decline in newly licensed FDI after 1996 would appear to have been even sharper.

Cumulative FDI (as of 12/27/2004):

-- Licensed projects: 5,109 (US$ 45.766 billion)
-- Disbursed capital: US$ 26.773 billion (58 percent of licensed capital)

Note: GVN authorities routinely revise or revoke investment licenses that have not been utilized and other investment licenses contain automatic expiration clauses that take effect if a project or certain phases of a project are not implemented by a certain date. Statistics on the number of licensed projects and the value of licensed projects are then adjusted accordingly.

Foreign direct investment in selected sectors (Cumulative, as of 12/27/2004):

Sector	Number of projects	Licensed capital (Billion US$)	Implemented capital (Billion US$)
¶1. General Industry	3,103	20.8511.99	
¶2. Oil & gas	27	1.90	4.43
¶3. Construction	293	3.88	2.04
¶4. Real estate development	104	3.64	1.61
¶5. Hotels & Tourism	166	3.61	2.20
¶6. Trans./Comm.	143	2.57	0.92
¶7. Agriculture & forestry	591	3.13	1.55
¶8. Fisheries	105	0.29	0.15
¶9. Finance & banking	56	0.74	0.63
56 0.74 0.63			
¶10. Culture, Health & Edu.	179	0.67	0.34

Foreign direct investment by country (Jan to Dec 27, 2004):

Country	Number of projects	Licensed Capital (Million US$)
¶1. Taiwan	156	453
¶2. South Korea	159	340
¶3. Japan	61	224
¶4. Hong Kong	38	198
5.British Virgin Islands	25	177
¶6. Canada	12	155
¶7. Singapore	47	124
¶8. Malaysia	24	84
¶9. China	67	79
¶10. United States	30	75

Foreign Direct Investment by country:
(Cumulative, as of 12/27/2004)

Country   Number of   Licensed
Implemented
        projects   capital   capital
     (Billion US$)   (Billion
US$)
¶1. Singapore 334   7.983.38
¶2. Taiwan   1,2597.263.15
¶3. Japan 4905.394.25
¶4. South Korea 8404.752.89
¶5. Hong Kong 3263.231.94
¶6. Brit.Virg.Isl. 2122.431.14
59 7.26   3.15
¶3. Japan   490
5.39   4.25
¶4. South Korea   840
4.75   2.89
¶5. Hong Kong   326
3.23   1.94
¶6. Brit.Virg.Isl. 212
2.43   1.14
¶7. France 1422.151.06
¶8. Netherlands   531.841.97
¶9. Thailand 1161.380.76
¶10. Malaysia 1631.320.81
¶11. United States 2151.280.73
¶12. United Kingdom 621.220.60
¶13. Switzerland   280.660.52

There is little data available on Vietnam's direct investment abroad. According to the Ministry of Planning and Investment, as of December 2004, Vietnamese businesses had invested in 113 projects worth about US$ 226 million in Russia, Singapore, Laos, Japan, Hong Kong, Cambodia, Tajikistan, the Middle East, the United States, Uzbekistan, and Taiwan. These investments were concentrated in the following sectors: transport, communications, construction, food processing, oil and gas, hotel, restaurant, and agriculture sectors. Vietnamese businesses have two investment projects worth US$ 260,000 in the United States. One Vietnamese government-owned telecommunications firm established an office in California. There are no Vietnamese
lished
an office in California. There are no Vietnamese
government regulations on investment overseas.

Note: Statistics, including those on investment, are often difficult to come by and are generally based on definitions that differ from internationally accepted standards. Those published in government statistical surveys are generally incomplete and often inconsistent from publication to publication and over time. It is the policy of the Ministry of Planning and Investment to respond only to written requests for statistics or information on how they are compiled and calculated, a process that is cumbersome and very time consuming. Additional statistical data is often released in the local press but is difficult to confirm and update year-to-year, because it is not also provided in a database, which is readily available to the public.
End text.

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